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Forty-sixth session
Item 15 of the provisional agenda

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Note by the Secretary-General

1. At its forty-fourth session, the Commission on Human Rights adopted resolution 1988/59 entitled "Use of scientific and technological developments for the promotion and protection of human rights and fundamental freedoms" under agenda item 15 "Human Rights and scientific and technological developments".

2. In operative paragraph 2 of that resolution, the Commission invited the United Nations University, in co-operation with other interested academic and research institutions, to continue to study both the positive and the negative impact of scientific and technological developments on human rights and fundamental freedoms, and expressed the hope that the United Nations University would inform the Commission on Human Rights at its forty-sixth session of the results of its study on the question.

3. In response to the above-mentioned invitation, the United Nations University, by a letter dated 28 April 1989, informed the Under-Secretary-General for Human Rights that the research phase of the project relating to human rights and scientific and technological progress had been delayed. A workshop was convened in July 1989 to agree on a research plan. The final report was expected to be ready in February 1991. The United Nations University stated that it would not, therefore, be possible to provide a report for consideration by the Commission on Human Rights at its forty-sixth session in February 1990.

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Human rights and scientific and technological developments

Report of the Secretary-General

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Introduction

1. In its resolution 1988/60 of 9 March 1988, the Commission on Human Rights requested the Secretary-General, in the light of the comments and views of Member States, to submit a report on the implementation of this resolution to the Commission at its forty-sixth session. Three earlier reports on the subject had been submitted in 1984, 1986 and 1988 respectively under Commission on Human Rights resolutions 1983/41, 1984/27 and 1986/10. */

2. By a note verbale dated 2 June 1988, the Governments of States Members of the United Nations were invited to supply their comments and views on the subject.

3. At 1 November 1989, replies had been received from the Governments of Bangladesh, Bulgaria, Cuba, Libyan Arab Jamahiriya, Mexico and Syrian Arab Republic.

4. The replies received will be found in chapter I of the report.

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*/ See documents E/CN.4/1984/33 and Add.1-2, E/CN.4/1986/27 and Add.1 and E/CN.4/1988/29.

READEX FICHE

Replies from States Members of the United Nations

BANGLADESH

[Original: English]
[20 December 1988]

1. Abuse of scientific and technological developments obviously brings distress and disaster to human civilization. Each and every people of the United Nations has the inherent right to lead and enjoy a peaceful life in all spheres such as economic, social, cultural, political freedom, etc. It is well known that the proper utilization of scientific and technological advancement has become one of the most important factors/tools in the development of human society.

2. Bangladesh firmly endorses resolution 1988/60 of 9 March 1988 entitled "Human rights and scientific and technological developments" of the Commission on Human Rights and it subscribes to the Commission's reaffirmation "that all peoples have an inherent right to life and that the safeguarding of this cardinal right is an essential condition for the enjoyment of the entire range of economic, social and cultural as well as civil and political rights".

3. Bangladesh is working in close co-operation in realizing the above objectives with different organizations under the United Nations system, e.g. UNESCO, the Asian and Pacific Centre for Transfer of Technology of ESCAP and also with other organizations such as the Islamic Foundation for Science, Technology and Development (IFSTAD) of the Organization of Islamic Conference (OIC) and the Commonwealth Science Council of the Commonwealth Secretariat, with regional organizations such as the Association for Science Co-operation in Asia (ASCA), and also within the South Asian Association for Regional Co-operation (SAARC). Besides these, Bangladesh has also entered into bilateral agreements on scientific and technological co-operation with a number of countries.

4. While subscribing to the importance laid by the Commission on the subject in paragraphs 1 to 3 and 6 and it calls upon all States in paragraphs 4, 5 and 7, Bangladesh wishes to say that use of scientific and technological research towards national development is already in process in the country. Besides, the national science and technology policy of Bangladesh envisages, inter alia, greater international co-operation and collaboration in enhancing scientific and technological knowledge and using these to solve global problems in the interests of international peace for the benefit of mankind.

BULGARIA

[Original: ENGLISH]
[16 December 1988]

1. The People's Republic of Bulgaria gave its full support to, and co-sponsored, resolution 1988/60, "Human rights and scientific and technological developments", adopted at the forty-fourth session of the Commission on Human Rights. In determining its position, Bulgaria proceeded from its clear awareness of the role of science and technology in the development of human civilization.

2. The contemporary world has been evolving, to a major degree, under the impact of scientific and technological achievements. It is scientific and technological progress that has made possible the foremost accomplishments by man in all areas of life; this same progress has become a primary factor in the solution of today's global issues. As used for peaceful purposes, science and technology exert a direct positive impact on the socio-economic development of society and, consequently, in the enhancement of the living standards of all nations.

3. Bulgaria shares the view that scientific and technological progress has its other side too: irrational use and misuse of achievements of modern science and technology; catastrophes threatening the very existence of human civilization. In the twentieth century, the task of guaranteeing the right to life in a peaceful and secure international setting has fast become a global task for mankind. International security is non-existent without human rights. However, it is still more unrealistic to believe that enjoyment of human rights is possible unless international peace and security are guaranteed. For those are the realities of the complex and interrelated world of today.

4. These new realities require, in their turn, a new approach to solve mankind's problems. Bulgaria firmly adheres to the view that it is high time that the "enemy image" and old stereotypes of bias and hostility make a retreat in favour of the new political thinking. The same is true of political and ideological confrontation, which must retreat in favour of the yearning to foster understanding, mutual confidence and co-operation in all areas, including human rights, to strengthen peace and security.

5. Bulgaria firmly believes that, for the achievements of scientific and techological progress to be used genuinely for the well-being of the whole of mankind, and to do away with their negative implications, it is necessary to adopt an unbiased approach based upon the principles enshrined in the General Assembly Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (resolution 3384 (XXX) of 10 November 1975).

6. In the field of international co-operation on human rights, Bulgaria has always striven for effective solutions to the real problems facing both human society and the individual in the contemporary world. It has called and calls upon its partners, irrespective of their political concepts and socio-economic systems, to persevere in this direction. This is also the basis upon which the People's Republic of Bulgaria wishes to co-operate in the United Nations with all States in the solution of human rights issues.

CUBA

[Original: Spanish]
[3 August 1988]

1. It is my pleasure to inform you that the Republic of Cuba supports the efforts of the United Nations to implement world-wide the provisions of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind. This Declaration is a courageous and important instrument which reflects the necessity of taking

effective and urgent steps, both at the national and international levels, to prevent possible negative repercussions of scientific and technological development on the cause of peace, human rights and the international community in general.

2. To this end, the Government of the Republic of Cuba considers that the furtherance of international co-operation should be directed towards strengthening international peace and security, freedom and independence, achieving the economic and social development of peoples and realizing fundamental rights and liberties, in accordance with the Charter of the United Nations.

3. Moreover, the Republic of Cuba is in favour of preventing scientific and technological achievements from being used to limit or impede the individual's enjoyment of human rights and basic liberties.

4. In this regard, the Government of the Republic of Cuba wishes to make it clear that, ever since the triumph of the Revolution, it has always pursued a policy of observing and promoting the progressive character of science, as reflected in article 38, paragraphs (f) and (g) of the Constitution of the Republic of Cuba, which facilitate research and grant priority to research geared to resolving problems relevant to the interests of society and the welfare of the people as well as encouraging the involvement of workers in scientific work and development.

LIBYAN ARAB JAMAHIRIYA

[Original: Arabic]
[17 January 1989]

For years, most of the developing countries have been faced with difficult economic circumstances due to drought, natural disasters and a shortage of resources, as a result of which they are burdened with external debts. In order to enable the developing countries to achieve their goals of development and progress, the international community must endeavour to take the following measures:

1. Practical steps must be taken to achieve disarmament and to use the surplus financial resources that would be made available through the implementation of the disarmament programme in order to promote socio-economic development in the countries of the third world.

2. Man's creative abilities should be directed towards scientific research, with a view to furthering the interests of mankind and reducing the dangers of disease, poverty and ignorance which are threatening the human race.

3. The resources which the developed countries are using for the production of nuclear and other weapons of mass destruction should be rechannelled to support socio-economic development throughout the world, and particularly in the countries that are suffering continuing acute economic crises due to their external indebtedness and poor economic performance.

Accordingly, the Libyan Arab Jamahiriya proposes that the developed countries should reduce the volume of their spending on the production of nuclear weapons to an extent commensurate with the external debts of the developing countries, thereby promoting the development process in the latter countries and ensuring a surplus in their balance of payments so that they can restructure their economies.

MEXICO

[Original: Spanish]
[24 January 1989]

1. The Government of Mexico recognizes that the arms race fosters insecurity and tension between the great Powers, generates global uncertainty and is not unrelated to regional conflicts, particularly in the developing countries. Moreover, it considers that the manufacture of armaments and their operating systems entails a diversion of financial and human resources which should be used to promote the well-being and development of peoples.

2. In accordance with its foreign policy, Mexico has spared no effort in its attempts to curb and combat the situation. On the basis of the views set out above, the President of the Republic, in conjunction with the heads of State or Government of Argentina, Greece, India and Sweden, and the First President of Tanzania, has pursued a peace and disarmament initiative.

3. The concern of the Group of Six has been expressed on various occasions. In the message addressed to the International Conference on the Relationship between Disarmament and Development, held under the auspices of the United Nations in 1987, it was stressed that disarmament is not the task of the developed countries alone, but of the international community as a whole.

4. With the aim of maintaining continuity in the work on the Initiative for Peace and Disarmament, the Group of Six met in Stockholm, Sweden, on 21 and 22 January 1988. It reiterated its call for the suspension of nuclear tests and the prevention of an arms race in outer space; in addition, it noted with satisfaction the continuing dialogue between the great Powers, which had resulted in the signing of the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, in Washington D.C., on 8 December 1987.

5. At this meeting, the Group of Six drew up a document known as the "Stockholm Declaration", which, inter alia, indicated the legitimate interest of the non-nuclear-weapon States in the abolition of such weapons and reaffirmed that no nation has the right to use them.

6. The Declaration also stressed the readiness of the non-nuclear-weapon States to contribute in working towards a speedy adoption of a comprehensive nuclear-test-ban treaty.

7. The offer to assist in the monitoring of any accord on the halting of nuclear tests still stands.

8. The Government of Mexico has supported the resolutions of the United Nations General Assembly on human rights and scientific and technological progress.

SYRIAN ARAB REPUBLIC

[Original: Arabic]
[11 September 1989]

1. With regard to operative paragraph 4 of resolution 41/113

Article 21 of the Constitution of the Syrian Arab Republic stipulates that: "The aim of the educational and cultural system is to establish a new generation ... and further the interests and progress of mankind".

Accordingly, this provision, which lies at the very heart of the State's basic legislation, defines the aim of all scientific or cultural progress as the furtherance of the interests and progress of mankind. Consequently, the results of such progress are used exclusively in the interests of international peace, for the benefit of mankind and for promoting and encouraging universal respect for human rights and fundamental freedoms, which constitute the basis for the furtherance of the interests and progress of mankind.

In accordance with this basic legislative text, scientific or technological progress can only be used in the Syrian Arab Republic to further the interests and progress of mankind and cannot be used for other purposes inconsistent with a constitutional provision.

However, it should be noted that present Syrian law does not lay down any penalty for the use of the results of scientific and technological progress in a manner inconsistent with the principles set forth in the Constitution. It might therefore be proposed that additional legislative provision should be made for the registration of inventions in such a way as to prohibit the use of any invention whatsoever in any manner inconsistent with these principles, with the stipulation of an appropriate penalty, if the Ministry of Foreign Affairs deems such a measure to be necessary. The Ministry of Justice is willing to help in the legal formulation of the legislative aims that might be proposed in this connection.

It should be noted that, in the event of the Syrian Arab Republic acceding to international conventions that guarantee human rights and fundamental freedoms and prohibit the use of scientific and technological progress for purposes other than the benefit of mankind, this would be equivalent to legislation effective from the date of ratification of those conventions and the Ministry of Foreign Affairs, being aware of these conventions, could invoke them as measures that have been taken, by virtue of their ratification, to ensure that scientific and technological progress is used solely for the benefit of mankind.

2. With regard to operative paragraph 5 of resolution 41/113

The wording of the penal provisions in force in the Syrian Arab Republic clearly implies the prohibition of any propaganda for war, by any means whatsoever, or engagement in any measure or act conducive to the actual outbreak of war.

Under article 228 of the Penal Code, any person who contravenes the measures taken by the State to preserve its neutrality in war is liable to a penalty of from 3 to 15 years' imprisonment.

In view of the fact that Syria has adopted the principles of non-alignment and positive neutrality, propaganda for war constitutes a contravention of the measures that it has adopted to preserve its neutrality. The same article also provides for the punishment of any person who engages in acts or written or spoken communications unauthorized by the Government (in keeping with its policy of positive neutrality and non-alignment) and thereby exposes Syria to the danger of acts of aggression or the disruption of its relations with a foreign State or exposes Syrians to acts of reprisal against their persons or their property.

In so far as propaganda for war, by whatever means, falls within the purview of the above-mentioned article and exposes Syria to the danger of acts of aggression or the disruption of its relations with a foreign State, this penal provision therefore covers the concepts of propaganda of war.

Under article 219, any act of aggression committed in Syrian territory or carried out by a Syrian national with a view to changing the constitution of a foreign State or annexing part of its territory by force is punishable by a penalty of from 3 to 15 years' imprisonment.

It is evident that an act aimed at annexing part of the territory of a foreign State or changing its constitution by force is an act aimed at instigating a war against that State and, consequently, constitutes propaganda for war against that State, in accordance with the ostensible purpose of such an act, and is therefore covered by the penal provisions in force.

Consequently, the legislative provisions in force prohibit any propaganda for war against any peaceful country, by any means whatsoever, and the declared policy to which the Syrian Arab Republic is committed therefore opposes and prohibits any propaganda for war.

It should be noted that the Ministry of Justice believes that a clear distinction must be made between propaganda for war as a means to deprive peoples of their will, exploit their resources and occupy their territories (to which the above-mentioned penal provisions apply) and the encouragement of peoples to defend their territories diligently, to exercise their right to self-determination and to impose their national will on their territories and peoples (which falls within the purview of self-defence and wars of liberation, the encouragement of which is in keeping with the Charter of the United Nations and with human rights and is not covered by any penal provision).

3. With regard to operative paragraph 2 of resolution 41/115

A statement concerning the extent of the endeavours that have been made to use the achievements of science and technology in order to promote peaceful social, economic and cultural development and progress transcends the field of competence of the Ministry of Justice. This matter should be referred to the ministries responsible for those endeavours.

4. With regard to operative paragraph 4 of resolution 41/113

A statement concerning the extent of implementation of the provisions of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind falls within the competence of the Ministry of Foreign Affairs, in so far as it may have proposed or requested ratification in this connection, and depending on the action taken in this connection and in connection with the implementation of the provisions of that Declaration.

Accordingly, the Ministry of Justice believes that the preparation of a report concerning the application of the provisions of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind does not fall within the legal or legislative sphere of action and should be assigned to other competent ministries, particularly since no legislative text or regulations in that connection have been submitted to the Ministry of Justice with a request for its opinion on their wording, their consistency with the legislation in force, or the need therefor.

With regard to the medical procedures that should be applied in the treatment of mentally-ill detainees, measures to define the adequate justification for the detention of those persons, and the application of those medical procedures, the matter should be referred to the Ministry of Health and the Ministry of the Interior, since the detention of persons who pose a threat to public safety due to the weakness of their mental capacities and the detention of persons who have not committed an offence fall, under the provisions now in force, within their fields of competence.

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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

REPORT OF THE WORKING GROUP ON THE DRAFT BODY OF PRINCIPALS AND GUARANTEES FOR THE PROTECTION OF MENTALLY-ILL PERSONS AND FOR THE IMPROVEMENT OF MENTAL HEALTH CARE

Chairman-Rapporteur: Mr. Henry Steel
(United Kingdom of Great Britain and Northern Ireland)

GE.90-10871/1567B

INTRODUCTION

1. The Commission on Human Rights, at its forty-fifth session in 1989, decided, by its resolution 1989/40 of 6 March 1989, to establish an open-ended working group of the Commission to examine, revise and simplify as necessary the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1988/23), with a view to submitting it to the Commission at its forty-sixth session. It requested the Working Group to meet for a period of two weeks before the forty-sixth session of the Commission.

2. The Economic and Social Council, by resolution 1989/76 of 24 May 1989, authorized an open-ended working group to meet for a period of two weeks prior to the forty-sixth session of the Commission on Human Rights.

3. The General Assembly, by resolution 44/134 of 15 December 1989, welcomed the establishment of the Working Group and urged the Group to examine the draft principles and guarantees expeditiously. It also requested the Commission to consider the subject at its forty-sixth session, in the light of the deliberations and recommendations of the open-ended Working Group, with a view to submitting the draft principles and guarantees to the General Assembly at its forty-fifth session, through the Economic and Social Council.

4. The Working Group held 21 meetings from 8 to 19 January 1990 and on 21 February 1990. The session was opened by the representative of the Under-Secretary-General for Human Rights who made an introductory statement.

ELECTION OF OFFICERS

5. At its 1st meeting, on 8 January 1990, the Working Group elected Mr. Henry Steel (United Kingdom of Great Britain and Northern Ireland) as Chairman-Rapporteur.

PARTICIPATION

6. The meetings of the Working Group, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States members of the Commission: Argentina, Brazil, Bulgaria, Canada, China, Cuba, Germany, Federal Republic of, India, Italy, Japan, Morocco, Peru, Philippines, Portugal, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

7. The following States, non-members of the Commission on Human Rights, were represented by observers at the meetings of the Working Group: Australia, Austria, Costa Rica, Finland, German Democratic Republic, Greece, Kenya, New Zealand, Norway, Turkey and Zimbabwe.

8. The World Health Organization was represented at the Working Group by an observer.

9. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings of the Working Group: Disabled Peoples' International, Friends World Committee for Consultation, International Association of Penal Law, International Commission of Health Professionals, International Commission of Jurists, International Council of Psychologists, Pax Christi International, World Association for Psychosocial Rehabilitation, World Federation for Mental Health, World Psychiatric Association.

DOCUMENTS

10. The Working Group had before it the following documents:

E/CN.4/1990/WG.8/L.1	Provisional agenda
E/CN.4/1990/53	Report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1989/40
E/CN.4/1990/53/Add.1	Information and comments submitted by Sweden, the World Medical Association, and the World Psychiatric Association
E/CN.4/1990/53/Add.2	Information and comments submitted by Australia, Austria and the World Association for Psychosocial Rehabilitation
E/CN.4/1990/53/Add.3	Information and comments submitted by Japan and the World Health Organization
E/CN.4/1990/WG.8/WP.1	Working paper submitted by the Secretariat pursuant to ECOSOC resolution 1989/76
E/CN.4/Sub.2/1988/23	Report of the Sessional Working Group on the question of persons detained on the grounds of mental ill-health or suffering from mental disorder, including draft Principles and Guarantees for the Protection of Mentally-ill Persons and for the Improvement of Mental Health Care. Report prepared by Mrs. Claire Palley.
E/CN.4/Sub.2/1983/17/Rev.1	Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder. Report prepared by Mrs. Erica-Irene A. Daes.
E/CN.4/Sub.2/1983/17/Add.1	Annex III to Mrs. Daes' report (above)

E/CN.4/1988/NGO/27	Written Statement submitted by Disabled Peoples' International, a non-governmental organization in consultative status (category II).
E/CN.4/1989/NGO/75	Written Statement submitted by Disabled Peoples' International.

ORGANIZATION OF WORK

11. At its 1st meeting, on 8 January 1990, the Working Group adopted its agenda, contained in document E/CN.4/1990/WG.8/L.1.

12. The Chairman-Rapporteur made a brief introductory statement, referring to the history of the draft body of principles and guarantees and the work so far accomplished by the sessional Working Group of the Sub-Commission. He paid particular tribute in this respect to the contribution to that work made first by Mrs. Daes and subsequently by Mrs. Palley. He proposed, and the Working Group agreed, that the draft submitted by the Sub-Commission should constitute the basis and framework for the Working Group's own deliberations. He appealed to the Working Group to make every effort to achieve as much substantive progress as possible, keeping in mind General Assembly resolution 44/134 of 15 December 1989.

13. The Working Group agreed that the most efficient way to proceed would be to put aside for later consideration the question of the title of the draft as a whole (as well as the headings of particular articles) and also the various definitions of terms contained in article 2 of the Sub-Commission's draft. The Working Group would revert to these matters after it had completed its consideration of all the substantive articles. At that point, the necessary decisions on title and headings would be taken in the light of the shape and content of the draft as a whole and it would then be possible to see more clearly what terms needed definition.

14. Accordingly, the Working Group decided to work its way, article by article, through the draft submitted by the Sub-Commission (but leaving aside article 2, as explained above), modifying and replacing particular provisions in the Sub-Commission's text as might be necessary and agreed, and adopting agreed texts of the various articles as the work proceeded. It was accepted that, when the whole text had been covered in this way, further consideration would have to be given to the placement of certain articles (and of particular paragraphs in certain articles). It was also accepted that decisions still to be taken on some of the later articles might make it necessary to reconsider some of the provisions already adopted and to modify them so as to ensure consistency of approach, both as regards substance and as regards form and language. More generally, it was agreed that, when the Working Group had completed its discussion of the draft as a whole, it would be desirable to arrange for the carrying out of a technical review to ensure economy and consistency of drafting (and in particular the consistency of the draft with other relevant international instruments in the field of human rights).

CONSIDERATION AND DRAFTING OF ARTICLES

15. In the light of these decisions on its working methods, the Working Group embarked on its examination, revision and simplification as necessary of the draft body of principles and guarantees submitted by the Sub-Commission and supplemented by comments and suggestions from Governments, specialized agencies and non-governmental organizations contained in documents E/CN.4/1990/WG.8/WP.1, E/CN.4/1990/53 and Add.1-3.

16. At its 2nd to 18th meetings, from 8 to 18 January 1990, the Working Group considered and adopted articles corresponding to articles 1 and 3 to 14 of the Sub-Commission's draft. At its 18th meeting, on 18 January 1990, it decided to reformulate article 14 of the Sub-Commission's draft and incorporate it into article 13 as paragraph 3. At its 18th to 20th meetings, on 18-19 January 1990, the Group considered some paragraphs of article 15 of the Sub-Commission's draft and adopted revised paragraphs 1 and 2 of that article.

17. In the course of its work on the articles referred to above, the Working Group also formulated and adopted two new articles, which it provisionally numbered as articles 5 (bis) and 6a without prejudice to their placement. Similarly, a general limitation clause, which would avoid the need for corresponding detailed qualifications to be incorporated in a number of separate articles, was adopted in principle by the Group, but without commitment to its wording and placement.

18. The text of all these articles adopted by the Working Group at its first session are set out in the Annex of the present report.

FUTURE WORK

19. At its 20th meeting, on 19 January 1990, the Working Group agreed to the Chairman's proposals as to the form and content of this present report, and it then discussed how the progress already achieved could best be taken to completion. There was general agreement that useful progress had indeed been made at this first session and that a continuation of the work in the same way offered a good prospect of the final elaboration, within a reasonable period, of a text which could be of great value in the field of mental health care and the protection of the human rights of those concerned. The Working Group considered that, if it was authorized to meet for a further session of two weeks, at some point before the next session of the Commission, and were mandated then to pursue its work on the same basis as before, there would be a reasonable expectation that it could complete its task within an acceptable time-scale. It would be helpful if the Secretariat could prepare for the assistance of the Working Group, at that further session, a working paper covering the articles that remained to be discussed and taking account of the comments and suggestions made by Governments, specialized agencies and non-governmental organizations, including those submitted during the session of the Working Group.

20. The report was adopted at the 21st meeting of the Working Group, on 21 February 1990.

ANNEX

TEXT OF ARTICLES ADOPTED BY THE WORKING GROUP

Title
[To be discussed]

Article 1

These Principles and Guarantees shall be applied without discrimination of any kind such as disability, race, colour, sex, language, religion, political or other opinion, national or social origin, social status, age, property or birth.

Article 2
[To be discussed]

Article 3

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.

2. All persons with a mental illness or who are being treated as such persons shall be treated with humanity and respect for the inherent dignity of the human person.

3. All persons with a mental illness or who are being treated as such persons have the right to protection from exploitation, physical or other abuse and degrading treatment.

4. There shall be no discrimination on the grounds of mental illness. Special measures taken for the sole purpose of protecting the rights, or securing the advancement, of persons with mental illness shall not be deemed to be discrimination. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the procedures in these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals. ["Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights.] */

5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political

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*/ Last sentence adopted without prejudice to its placement.

Rights and the Declaration on the Rights of Disabled Persons, subject within the limits prescribed by those instruments to the provisions of domestic law relating to incapacity which include those providing for the judicial review of any relevant decision. */

6. Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interests.

Article 4

1. A patient in a mental health facility shall be informed as soon as possible after admission in a form and a language which the patient understands of all his or her rights in accordance with these Principles and Guarantees and under domestic law, which information shall include an explanation of these rights and how to exercise them.

2. If and for so long as a patient is unable to understand such information, the rights of the patient shall be communicated to the person or persons best able to represent the patient's interests and willing to do so.

3. A patient who has the necessary capacity has the right to nominate a person who should be informed on his or her behalf.

Article 5

1. Every patient in a mental health facility shall, in particular, have the right to full respect for his or her:

(a) privacy;

(b) freedom of communication which includes freedom to communicate with other persons in the facility; freedom to send and receive uncensored private communications; freedom to receive, in private, visits from a legal or other representative and, at all reasonable times, from other visitors; and freedom of access to postal and telephone services and to newspapers, radio and television;

(c) freedom of religion or belief.

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*/ Italy has proposed the inclusion of the following words:

"In no case shall there be a derogation from the aforesaid rights of a person with a mental illness unless a competent medical authority determines that there is a serious risk of harm to the person concerned or to other persons and this determination is subject to judicial review or validation".

No decision has been taken on this proposal.

2. The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

(a) facilities for recreational and leisure activities;

(b) facilities for education;

(c) facilities to purchase or receive items for daily living, recreation and communication;

(d) facilities, and encouragement to use such facilities, for his or her engagement in active occupation suited to his or her social and cultural background and for training designed to promote rehabilitation and reintegration in the community.

3. In no circumstances shall a patient be subject to forced labour.

4. The labour of a patient in a mental health facility shall not be exploited. Every such patient shall have the right to receive the same remuneration for any work which he or she does as would, according to domestic law or custom, be paid for such work to a non-patient. Every such patient shall in any event have the right to receive a fair share of any remuneration which is paid to the mental health facility for his or her work.

Article 5 (bis)

The right of a [patient] to confidentiality of information concerning him or her shall be respected. */

Article 6

1. A determination that a person has a mental illness shall be in accordance with internationally accepted medical standards.

2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership in a cultural, racial or religious group, or any other reason not directly relevant to mental health status.

3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

5. No person or authority should classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

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*/ Adopted without prejudice to its placement.

Article 6(a) */

No person shall be compelled to undergo medical examination with a view to determining whether or not he or she has a mental illness except in accordance with a procedure authorized by domestic law.

Article 7

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.

3. Every patient shall have the right to treatment suited to his or her cultural background.

Article 8

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with:

(a) the same standards as other ill persons; and

(b) the internationally accepted standards of the mental health professions, including the Principles of Medical Ethics adopted by the United Nations General Assembly.

2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients or staff or other acts causing mental distress or physical discomfort.

Article 9

1. A mental health facility shall have access to the same resources as any other health establishment, and in particular:

(a) qualified medical and other appropriate professional staff in sufficient numbers and adequate space to provide the patient with a programme of appropriate and active therapy and privacy;

(b) diagnostic and therapeutic equipment for the patient;

(c) appropriate professional care; and

(d) adequate, regular and comprehensive treatment, including supplies of medication.

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*/ Adopted without prejudice to its placement.

2. Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment, and care of patients comply with these [Principles].

Article 10

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.

3. Psychiatric knowledge and skills shall never be abused.

4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Article 11

1. Medication shall meet the best health needs of the patient and shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment, or for the convenience of others. Subject to the provisions of Article 12 of these Principles, mental health practitioners shall only administer medication of known or demonstrated efficacy.

2. All medication shall be prescribed by a medical practitioner or by another trained person authorized by law and shall be recorded in the patient's records.

Article 12

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7 and 8.

2. Informed consent is consent obtained freely without threats or improper inducements after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient of:

(a) the diagnostic assessment;

(b) the purpose, method, likely duration and expected benefit of the proposed treatment;

(c) alternative modes of treatment, including those less intrusive; and

(d) possible pain or discomfort, risks and side effects of the proposed treatment.

3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.

4. Patients have the right to refuse or stop treatment except as provided for in paragraphs, 6, 7 and 8. The consequences of refusing or stopping treatment must be explained to the patient.

5. A patient shall never be invited or induced to waive the right to informed consent. If the patient should seek to do so, it shall be explained to the patient that the treatment cannot be given without informed consent.

6. Except as provided in paragraph 7 or in paragraphs 12, 13 and 14, a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied:

(a) the patient is, at the relevant time, held as an involuntary patient; and

(b) a competent and independent authority, established or prescribed by domestic law and having in its possession all relevant information, including the information specified in paragraph 2, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment; and

(c) the competent authority is satisfied that the proposed plan of treatment is in the best interests of the patient's health needs.

7. Paragraph 6 does not apply to a patient who is a minor or to any other patient with a legal representative empowered by law to consent to treatment for the patient; but except as provided in paragraphs 12, 13 and 14, treatment may be given to such a patient without his or her informed consent if the legal representative, having been given the information described in paragraph 2, consents on the patient's behalf.

8. Except as provided in paragaraphs 12, 13 and 14, treatment may also be given to any patient without the patient's informed consent if a qualified medical practitioner or another trained person authorized by law determines that it is urgently necessary in order to prevent immediate or imminent harm to the patient or to other persons. Such treatment shall not be prolonged beyond the period which is strictly necessary for this purpose.

9. Where any treatment is authorized without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives, and to involve the patient as far as practicable in the development of the treatment plan.

10. [All treatment shall be immediately recorded in the patient's medical records, with an indication of whether involuntary or voluntary]. */

11. Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for

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*/ Adopted without prejudice to its placement.

them, and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. The parents of minors or any legal representative shall be given prompt notice of any physical restraint or involuntary seclusion of the patient.

12. Sterilization shall never be carried out as a treatment for mental illness. Notwithstanding the provisions of paragraphs 6, 7 and 8, sterilization can be carried out on a person with a mental illness only where it is considered that it would best serve the health needs of the patient and where the patient gives informed consent, except that where the patient is unable to give informed consent, sterilization should be authorized only after independent external review.

13. Notwithstanding the provisions of paragraphs 6, 7 and 8, psychosurgery and castration can never be carried out on a patient who is an involuntary patient in a mental health facility and can be carried out on any other patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient.

14. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment only with the approval of a competent, independent review body specifically constituted for this purpose.

Article 13

1. Where a patient needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.

2. Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.

3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth in Article 15, apply, and he or she shall be informed of that right.

Article 14

[Deleted, as it becomes paragaraph 3 of Article 13].

Article 15 */

1. A person shall -

(a) be admitted involuntarily to a mental health facility as a patient;

or

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*/ Text of Article 15 is as adopted at the end of the Working Group session. Paragraph 3 has yet to be discussed.

(b) having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility,

if and only if a qualified clinician authorized by law for that purpose determines [in accordance with Article 6] that that person has a mental illness and considers:

(i) that, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(ii) that, in the case of a person whose mental illness is severe and whose judgment is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of treatment which can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in sub-paragraph (ii), a second such clinician should be consulted if possible and, if such consultation takes place, the involuntary admission or retention may not take place unless the second clinician concurs.

2. Involuntary admission or retention shall initially be for a short period specified by domestic law for observation and preliminary treatment pending review of the patient's admission or retention by a judicial or other independent and impartial review body established by domestic law (hereinafter referred to as "the review body") and in accordance with procedures laid down in domestic law. The fact of the admission or retention and the grounds for it shall be communicated without delay to the review body, to the patient's representative (if any), and, unless the patient objects, to the patient's family.

Draft general limitation clause

The exercise of the rights set forth in these Principles and Guarantees may be subject only to such limitations as are prescribed by law and are necessary to protect the health or safety of the person concerned or of others or otherwise to protect public safety, order, health or morals or the fundamental rights and freedoms of others. */

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*/ Adopted in principle but without commitment to wording and placement.